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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/779,672	02/18/2004	Ryu Yokoyama	2001P078308 DIV1	8544

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EXAMINER	
HELLNER, MARK	
ART UNIT	**PAPER NUMBER**
3663	

DATE MAILED: 10/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/779,672	YOKOYAMA ET AL.	
	Examiner	Art Unit	
	Mark Hellner	3663	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 July 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1,3,8 and 15-26* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1, 3, 8 and 15-26* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1, 3, 8 and 15-26 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 9, and 11-13 of U.S. Patent No. 6,868,204. Although the conflicting claims are not identical, they are not patentably distinct from each other because Claims 1, 3, 8 and 15-26 of the present application are suggested by the claims of USPN 6,868,204 as follows:

Claim 1 of the present application recites:

(Currently amended) An optical amplifying and relaying system comprising:

an up and a down optical transmission line opposing each other; amplifiers each provided on each of the optical transmission; and monitoring light signal-folding back lines connected between the two optical transmission lines and each including an optical coupler for taking out a monitoring light signal led to one optical transmission line and wavelength selective reflecting means for transmitting the monitoring light signal

received from the one optical transmission line by folding-back transmission to the opposite optical transmission line wherein the optical amplifying and relaying system further comprises variable optical attenuators each provided between each optical coupler and the associated wavelength selective reflecting means.

Claim 1 of USPN 6,868,204 recites:

1. An optical amplifying and relaying system comprising: up and down optical transmission lines opposing each other; an amplifier provided on each of the optical transmission lines; monitoring light signal folding-back lines connected between the optical transmission lines and including an optical coupler for taking out a monitoring light signal led to one optical transmission line and wavelength selective reflecting means for transmitting the monitoring light signal received from the one optical transmission line by folding-back transmission to an opposite optical transmission line; and a variable optical attenuator provided between each optical coupler and the associated wavelength selective reflecting means, **wherein said variable optical attenuator supplies a predetermined attenuation amount to said monitoring light signal based on a state of said amplifier.**

The comparison above shows that claim 1 of the present application is dire4cted to subject matter that is broader in scope than claim 1 of USPN 6,868,204 and, as such, would have been obvious.

Claims 3, 25 and 26 are taught by claim 3 of the present application is directly taught by claim 3 of USPN 6,868,204.

Claim 8 of the present application recites:

8. (Currently Amended) An optical amplifying and relaying system comprising:

an up and a down optical transmission line opposing each other; amplifiers each provided on each of the optical transmission lines; and monitoring light signal folding-back lines connected between the two optical transmission lines and each including an optical coupler for taking out a monitoring light signal led to one optical transmission line and wavelength selective reflecting means for transmitting the monitoring light signal received from the one optical transmission line by folding-back transmission to the opposite optical transmission line, wherein variable optical attenuators are each provided between each optical coupler and the associated wavelength selective reflecting means, and the monitoring light signal folding-back lines are each provided on the input side of the optical amplifier on the one optical transmission line.

Claim 9 of USPN 6,868,204 recites:

9. An optical amplifying and relaying system comprising: up and down optical transmission lines opposing each other; an amplifier provided on each of the optical transmission lines; monitoring light signal folding-back lines connected between the optical transmission lines and including an optical coupler for taking out a monitoring light signal led to one optical transmission line and wavelength selective reflecting means for

transmitting the monitoring light signal received from the one optical transmission line by folding-back transmission to an opposite optical transmission line; and a variable optical attenuator provided between each optical coupler and the associated wavelength selective reflecting means, wherein said wavelength selective reflecting means comprises wavelength selective reflecting means on opposite sides of each of the variable optical attenuators, **and the wavelength selective reflecting means being operative to reflect light signals of different wavelengths for transmission to the opposite optical transmission line.**

The difference between claim 8 of the present application and claim 9 of USPN 6,868,204 (the text highlighted above) merely states the inherent function of the structural elements that both claims recite and, as such, does not set forth an unobvious difference.

Claims 15, 17, 20 and 22 are taught by claim 11 of USPN 6,868,204.

Claims 16, 18, 19, 21, 23 and 24 are taught by claims 12 and 13 of USPN 6,868,204

Any inquiry concerning this communication should be directed to Mark Hellner at telephone number 571 272 6981.

Mark Hellner

Primary Examiner
Au 3663